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Held at Headquarters, New York,
on Friday, 3 April 1981, at 10.30 a.m.

Chairman: Mr. ENGO (United Republic of Cameroon)

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The meeting was called to order at 10.45 a.m.

REPORTS OF THE SECRETARY-GENERAL:

(a) EFFECTS OF THE PRODUCTION LIMITATION FORMULA UNDER CERTAIN SPECIFIED ASSUMPTIONS (A/CONF.62/L.66)

(b) POTENTIAL FINANCIAL IMPLICATIONS FOR STATES PARTIES TO THE FUTURE CONVENTION ON THE LAW OF THE SEA (A/CONF.62/L.65)

Mr. ZULETA (Special Representative of the Secretary-General) introduced the report on potential financial implications for States parties to the future convention on the law of the sea (A/CONF.62/L.65). The report was based on assumptions which were obviously subject to revision. The estimates of expenditure were based on the relevant experience of the United Nations and other bodies of the United Nations system and were still open to modification in the light of further consultations and verifications. In the case of administrative and substantive units of the secretariat of the Authority and the Enterprise, the Secretariat had based its assumptions on the documents listed in paragraph 2 of the report. In making the estimates for the permanent facilities of the Authority and the Enterprise, in particular the headquarters of both the architectural units of the United Nations and its specialized agencies had been consulted; delegations would note that in many cases high, medium and low assumptions had been presented for capital investments and recurring costs. Personnel expenditure had been based on conditions prevailing within the United Nations system. Construction costs in different cities had been taken into account; the city in which personnel expenditure would in theory be lowest did not necessarily offer the lowest construction costs. The estimates relating to the Preparatory Commission included such conference services as interpretation, translation and documentation, but not substantive services.

(Mr. Zuleta)

At its 141st meeting the Conference had requested him to conduct a detailed study analysing the effects of a ceiling-flow-safeguard formula set out in article 151, paragraph 2 (b), contained in the report of the Co-ordinators of the Working Group of 21 (A/CONF.62/C.1/L.28/Add.1). The formula in question was embodied in the draft Convention on the Law of the Sea (Informal Text) (A/CONF.62/WP.10/Rev.3). The Conference had also given instructions with regard to the parameters and methods to be used for the study. The results of the study were before the Committee in document A/CONF.62/L.66. For the purposes of economy in presentation, all figures had been rounded off to one place of decimals. In the Secretariat's view, that did not substantially distort the projections, but if delegations thought that the distortion might be significant, the Secretariat would be happy to produce more detailed figures. The Secretariat had made no value judgements on the figures resulting from applying the formula set out in article 151, paragraph 2 (b); the opinions in the report were statements of fact relating to the trend lines and assumptions appearing in the report, and nothing in the document should be construed as an opinion for or against a given approach. The Secretariat would be happy to answer questions on the criteria used for the preparation of the study.

Mr. PASHO (Canada) said that, in accordance with the directive of the Conference, the Secretary-General's report on the effects of the production limitation formula under certain specified assumptions (A/CONF.62/L.66) was primarily a numerical study which illustrated the effects that the assumptions specified in the directive would have when applied to the production limitation formula. The report was most useful in that it provided for the first time an independent and impartial set of calculations that could be used by all delegations to examine the most recent production limitation formula. It clearly demonstrated how that formula, with such additions as floor and safeguards, should be calculated. His delegation was in complete agreement with the report and commended the Secretariat for developing a constructive basis for further work.

His delegation's analysis of the numerical results of the report showed, first, that for all cases evaluated in the report, sea-bed nickel production could take up from 15 per cent to 21 per cent of existing world demand for nickel during the

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first year of commercial sea-bed production; secondly, that for cases illustrating higher growth rates where the ceiling operated, allowable sea-bed production would be less than presumed new market growth during the latter part of the interim period, and, thirdly, that for all low-growth cases evaluated in the report where the "safeguard" operated, allowable sea-bed production exceeded presumed new market growth.

Since paragraph 2 of the report stated that the purpose of the report was to provide a clearer basis for evaluation, his delegation suggested that consideration should be given to establishing a group of experts for that purpose. An earlier group of technical experts had been most helpful in that it had produced an agreed nickel data-base and a methodology that had subsequently been used to calculate the ceiling that had been incorporated in the ICNT and its subsequent revisions. A similar group of technical experts could utilize the report of the Secretary-General as the basis for an evaluation of the production limitation formula.

Mr. MWANANG'ONZE (Zambia) said that while the report (A/CONF.62/L.66) attempted to give a numerical explanation of the application of the production control formula contained in article 151, paragraph 2 (b), of the draft Convention, it did not include the effects that sea-bed mining would have on existing and future land-based nickel, copper, cobalt and manganese industries. His delegation was aware, however, that thorough research into the effects of sea-bed mining on land-based mining would require a dynamic forecasting model incorporating several variable parameters instead of a quasi-static model utilizing only one independent variable, and it realized that the latter had been selected because of its simplicity, notwithstanding the severe limitations on its application to real-life situations.

With regard to paragraph 3 of the report, he observed that in an exponential trend line the time factors to which the growth rate was applied were just as important as the base amount. He believed that to be the case because the exponential trend line, being an exponential function, had two important parametric components which would affect, for a given growth rate calculated from the data for the relevant 15-year period, the production ceiling to be computed for any year for which production authorization was sought. In his view, therefore, the last sentence

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of paragraph 3 of the report should have made reference not only to the base amount but also to the time to which the growth rate was applied.

With regard to paragraph 4, his delegation did not believe that the fact that the production control formula under discussion was a reliable device for determining the behaviour of a metal market meant that it should be rejected in its entirety. Its crude nature and inadequacy served to emphasize the urgent need to improve upon it in order that sea-bed mining could start within a reasonable period and in a manner which provided adequate protection for land-based producers.

His delegation agreed with the statement in paragraph 5 that one erratic annual nickel consumption figure could affect the growth rate and the base amount in a trend line derived from the 15-year data. However, it had two reasons for rejecting the contention that projecting the trend line so derived for a period of seven years ahead could have an even more pronounced effect. The first reason was that, having determined the growth rate and the base amount from the historical data, the historical data were rejected; the second was that all values derived from the trend line in question lay, as a matter of fact, on that trend line, including the values projected seven years ahead using the trend line. The use of trendline analysis over a particular period of time - 22 years in the case under discussion - had a smoothening effect over that period, a phenomenon which was contrary to reality. Shifting of the data base to another time interval in the consumption time plane recognized that fact. The notion that trend line values projected for a period of seven years ahead could suffer violent fluctuations with zero correlation coefficient was entirely wrong. The projected values, together with trend line values corresponding to the 15-year period, gave perfect correlation as a consequence of the assumption made.

It was not at all true that the fluctuations gave rise to a reduction in the production ceiling in successive years: the reduction was actually due to the decreasing timed element within the production formula when computing values on the original trend line for the year prior to the year of the earliest commercial production. What happened was that, because the time-distance between the year immediately prior to the commencement of the interim period and the year for which the production ceiling was calculated was larger than that between the year preceding the year of the earliest commercial production and the year for which the

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production ceiling was calculated, the timed element in the former case attained a negative value five years before the timed element in the latter case passed through zero to negative. The base amount was influenced by the date in the 15-year period and the position occupied by that 15-year period on the time axis.

The omission from the report of a section giving a theoretical background to the computation of the statistical data presented in it seriously affected the acceptability of the report. Even a summary of the theory would have removed doubts about the authenticity of the data. An explanation of such salient features as trend lines used to obtain the substitute data and trend lines derived from the analysis of historical and substitute data, or at least a general statement of a trend line equation in algebraic form, would have made cross-checking much easier.

His delegation accepted the substitute data for world consumption of nickel presented in Annex II, table 2. The difference between the substitute data in the report and that in his delegation's possession ranged from 200 to 600 tonnes and arose from the 200-tonne difference in the trend line value for 1979. However, he had found the annual rates of increase of the original trend lines (annex II, table 4) to be incorrect for the following periods: 1964-1978, 1975-1989, 1976-1990, 1977-1991, 1978-1992 and 1979-1993. Even if the rates given in column (4) and the corresponding amounts in column (5) were assumed to be correct, the results given in columns (6), (7) and (8) would be wrong because they did not satisfy the necessary conditions, which, incidentally, were nowhere stated in the report. He had discussed those points with the Secretariat, and some of his observations had been acknowledged to be correct.

It was of the utmost importance, in his delegation's view, to bear in mind that what was before the Conference was a draft Convention, not a final, non-negotiable text. On the other hand, to try to improve part of a single article was not tantamount to reopening the entire Convention or even the whole of that article. It was likewise wrong to regard the nickel-based formula as having the status of a negotiated compromise. For that reason, his delegation had circulated informally to delegations a formula based on cobalt as a control, and it was worth noting that that formula gave relatively lower tonnages of metals produced from sea-bed mining.

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What his delegation was seeking was a method of protecting land-based producers without, however, creating for them a monopoly on their part of the market or striving to block sea-bed mining for the foreseeable future. His delegation would accordingly be prepared to participate in one further study with a view to producing a formula that would be responsive to the interests of all countries, and it therefore supported the proposal made by the representative of Canada on the establishment of a small group of experts, on the understanding that the work of the group of experts was not used as a pretext for further postponing the Conference's decision on the issue.

Mr. BRENNAN (Australia) supported the Canadian representative's suggestion. The Secretary-General's report provided only one illustration of the effect of the formula in one case of low growth, that in which a growth rate of 2 per cent was assumed. He suggested that the Secretariat should be asked to provide additional sets of figures based on assumed growth rates of 2.3 per cent and 2.7 per cent.

Mr. DE SOTO (Peru) said that it was clear that some delegations were in a better position to grasp the significance of the study than others. His delegation regarded the text which the Conference had produced to date as a negotiating, rather than definitively negotiated, text, and therefore did not rule out the possibility of improving on the content of any article. On the other hand, he felt that the Canadian proposal should be taken up at the following session of the Conference. Separate negotiations were already taking place on a great many subjects, and the smaller delegations could not spare the staff to cover all the different meetings going on at once.

Mr. MANANSALA (Philippines) said that he had expected the study, which his delegation had requested at the previous session to provide clear, impartial and simple analysis of the effects of the formula. Having seen the Secretary-General's report, however, he was more confused than ever. He supported the Canadian suggestion to set up a small study group, in the hope that it would afford a clearer insight into the implications of the document.

Mr. YARMOLOUK (Union of Soviet Socialist Republics) said that he found document A/CONF.62/L.66 very useful in that it could help to resolve the different interpretations placed by delegations on article 151 of the informal text of the Convention. His delegation generally found the report objective and convincing. On the Canadian proposal, however, he was inclined to agree with the Peruvian representative.

Mr. KALONJI TSHIKWALA KAKWAKA (Zaire) commended the Canadian proposal. The basic defect of the study prepared by the Secretariat was that it was based on a single metal. Had other metals been considered, very different results might have emerged. As they stood, however, the projections suggested that the consequences for existing land-based producers could be catastrophic. He felt that the proposed expert group should be set up as soon as possible.

Mr. MAQUIEIRA (Chile) said that he would prefer to take note of the Canadian proposal, but delay action on it until the following session.

Mr. WOOD (United Kingdom) said that he found the study both clear and accurate. The fact that he would refrain from touching on the substance of the question should not be taken to imply that he agreed with what other delegations had said on the matter; in some cases he definitely did not. On the matter of the expert group proposed by Canada, he shared the view of the Peruvian representative.

Mr. DEL CORRAL (Colombia) said that production limitation formulas had been under discussion in the Conference for years. There was no justification for setting up a group simply to improve the presentation of a set of data: the Secretariat could do the job far more rapidly; and in any case, no formula, however sophisticated, could predict all the effects of a measure such as production limitation. His delegation was, of course, willing to confer informally on the matter with other members of the Conference.

Mr. PRÉVAL PÁEZ (Cuba) said that the following session would be time enough to set up a small group, since many delegations would require more time to study the report. The Secretary-General's report was very useful in that it presented one way of applying the production limitation formula and might thus discourage all delegations from making their own individual interpretations.

Mr. EL GHOUAYEL (Tunisia) said that he had been taken aback by the Canadian proposal. The matter of article 151 was undoubtedly important, but few delegations could command the expertise in New York to assess the value of the Secretary-General's report at the moment. He believed that the question should be discussed in the time-honoured way, in restricted and informal negotiations.

Mr. MWANANG'ONZE (Zambia) said that the situation had been misrepresented by some delegations. The paper to which he had referred in his earlier statement set out a number of conditions for establishing whether the figures in columns 6, 7 and 8 of table 4 in annex II of the Secretary-General's report were consistent with those in columns 3, 4 and 5. The discrepancies between his delegation's figures and those in the Secretary-General's report were due to the fact that his delegation had used figures to five places of decimals for the trend line whereas the Secretariat paper used figures correct to only one place of decimals, making the results a great deal more approximate. It remained true that the formula did not protect existing producers of copper, nickel and cobalt.

It seemed that most delegations wished discussions of the matter to continue; in that case, there would have to be a time-limit if the discussions were not to degenerate into a mere exchange of arguments, the effect of which might be to jeopardize agreement on article 151. He had no intention of engaging in delaying tactics, but it would be wrong to mark time on the question until delegations were faced with a fait accompli. To reject the Canadian proposal out of hand might well defeat the efforts of the Conference to reach an acceptable compromise.

Miss MARTIN-SANÉ (France) said that while it might not be possible to verify all the figures contained in the report of the Secretary-General, they did appear to be correct, and her delegation saw no need for the moment to establish a group of experts. There were already too many technical studies on the matter, and her delegation believed that any further study should be postponed until the following session.

Mr. NOLARD (Belgium) said that the figures contained in the report on potential financial implications of the future convention for States Parties (A/CONF.62/L.65) seemed to indicate that with an average annual growth rate of 3 per cent, sea-bed mining production from five sites would increase production

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from a maximum of 14 mining sites 20 years later. That pattern of development worried his delegation inasmuch as it would mean that the cost of establishing the new organs would be far larger than income from sea-bed mining operations. As a result of recent developments, the Conference had time available to study the matter carefully and strike a balance between outlay and income. In other words, it was an opportune moment to determine whether the results of negotiations thus far were in keeping with what had been intended in 1970.

With regard to document A/CONF.62/L.66, his delegation understood the position of land-based producers, especially developing countries, and ways would have to be found to limit the impact of sea-bed mining on their economies.

Mr. NYAMWAYA MUDHO (Kenya) said that his delegation believed that the Conference had reached its concluding stage, and he was therefore dismayed by the trend of the discussion. While he understood the difficulties which some delegations had with the proposed production limitation formula, he found it inconceivable that some should wish to postpone discussion of the matter until a later session. If an expert group was needed, there was sufficient time for it to be established and complete its work before the end of the current session. Otherwise, it might work throughout the intersessional period so that the eleventh session, which had come to seem inevitable, would be the final one.

Mr. GIORGOLO (Italy) said that the report of the Secretary-General on the effects of the production limitation formula confirmed the calculations carried out by his delegation. If it was deemed necessary to establish a group of experts, his delegation would like to be a member. However, it appeared that delegations needed a good deal of time to study the report thoroughly before establishing such a group.

Mr. CHINHENGO (Zimbabwe) said that the problem created by article 151 of the draft Convention could be solved only by experts, and he believed that such a group should be established immediately. He agreed with the representative of Kenya that there was time for the group to work out an alternative formula before the end of the session. The group should also be instructed to study the effects of any proposed formula on land-based producers. His delegation was opposed to any

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further informal consultations, given the poor results of the consultations organized at the ninth session.

Mr. CALINGAERT (United States of America) said that document A/CONF.62/L.66 was a useful explanation of a very complex issue. His delegation shared the view of those who believed that it was neither appropriate nor necessary for the time being to establish a group of experts. If the proposal was raised again at the following session, his delegation would study it carefully.

Mr. LUCAS (Federal Republic of Germany) said that both reports under consideration were comprehensive and deserved further careful study by Governments. The reports demonstrated that what was being established was a very expensive system which might be too costly considering the limited number of sites that would be mined. In other words, the relationship between the financial implications and production control should be borne in mind. With regard to the proposed group of experts, his delegation supported the position taken by Peru that there had been many technical working groups on limitation and there was no immediate need for a further study. The matter should be put off until the following session.

Mr. MPEGA (Gabon) said that the representative of Zambia had clearly demonstrated the negative effects of the proposed production limitation formula on land-based producers. If that formula were to be adopted, Gabon would lose 30 per cent to 40 per cent of its income from manganese, a development that would run counter to article 151 of the draft Convention, which stated that activities in the Area should be carried out with a view to ensuring the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or on the volume of that mineral exported, to the extent that such reductions were caused by activities in the Area. An attempt should be made to find a formula that was acceptable to all countries, and his delegation therefore supported the proposal that a group of experts should be established immediately. That would not impede the work of the Conference but would save time at the following session.

Mr. BENNOUNA (Morocco) said that his delegation had always been willing to negotiate in good faith in order to secure universal agreement on a global package for the law of the sea. It was therefore inclined to be cautious about any proposal that might delay a satisfactory conclusion to the Conference. Statistics always had to be studied carefully because they could be manipulated to produce any result desired. It was for that reason that his delegation deplored any attempt to establish a relationship between the cost of the Authority and the income from mining sites, because the Authority was not intended to exist for only 20 years, but for centuries.

His delegation did not understand what type of mandate would be given to the proposed group of experts and would like an explanation before it took a position on the matter. The report of the Secretary-General was itself based on hypotheses, and he wondered whether the group of experts would analyse the basis for the calculations it contained or the calculations themselves. He hoped that the required explanations would be submitted in the form of a document so that delegations could study them.

Mr. ZULETA (Special Representative of the Secretary-General) said, with reference to comments made by the representative of Zambia, that the report on the production limitation formula (A/CONF.62/L.66) had excluded assumptions of interest to a particular group of countries because the Conference had desired that the number of assumptions used should be limited. If the Conference has wanted the study to cover other minerals such as manganese, cobalt and copper, it should have given the Secretariat instructions to use broader parameters, such as supply trends and market structures. Several studies had been made on those subjects by the United Nations Conference on Trade and Development and were available to delegations. The Secretariat had been aware that there was more than one way to make the mathematical calculations, but it had felt that it was preferable to use a method that had already been used in the Conference. As he had stated earlier, there were some small variations as a result of rounding off the figures of annual growth rates. If figures correct to five decimal places had been used, those variations would not have occurred. At any rate, if it was so decided, the Secretariat could provide the more detailed figures for annual growth rates.

In preparing the report, the Secretariat had confined itself to drawing attention to certain phenomena resulting from the assumptions used and had not attempted to draw any conclusions from them. As the representative of Australia had said, the Secretariat had not used any hypothetical growth rates in excess of 2 per cent because it had had no mandate to do so. If the Committee felt that that should be done, the Secretariat could issue an addendum to the report reflecting growth rates between 2 and 3 per cent - for example, 2.3 and 2.7 per cent. Two comments had been made in the debate which clearly demonstrated the difficulties encountered in preparing the report: one representative had stated that the report was too complex and should be studied by an expert group, while another had stated that it was not precise enough. The Secretariat had attempted to take the middle course with a view to producing a document that delegations would not find too technical.

Mr. MWANANG'ONZE (Zambia), supported by Mr. CHINHENGO (Zimbabwe), said that an addendum of the kind proposed would be too limited and would be merely another attempt to avoid facing the problem. His delegation would agree to the issue of such an addendum, however, provided that it was also decided to establish a group of experts to study the report.

The CHAIRMAN said that there was no consensus with respect to the establishment of a group of experts and he therefore suggested that he should be authorized to hold informal consultations with a view to reaching consensus on how to proceed.

Mr. GIORGOLO (Italy) said that his delegation had made calculations based on a growth rate of 2.5 per cent and would provide the figures to the Secretariat so that they could be made available to interested delegations.

The CHAIRMAN said that any delegation that wished to make calculations with respect to the growth rate of nickel consumption could do so and circulate them informally, since there seemed to be no agreement on the issuing of an addendum to the report.

The meeting rose at 1.05 p.m.